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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,742	01/21/2004	Raluca Dinu	14414-017001	3628
26191	7590	03/23/2006	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			PATEL, ASHOK	
			ART UNIT	PAPER NUMBER
			2879	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,742

Applicant(s)

DINU ET AL.

Examiner

Ashok Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication; even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>031904</u> . | 6) <input type="checkbox"/> Other: ____.  |

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1. Applicant is advise to update information of co-pending U.S. Patent applications at page 1 of the specification.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-9, 13-19, 21, 22, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherman et al (USPN 6,451,240).

As to claims 1-5, 7-9, 13-19, 21, 22, 26 and 27, Sherman et al disclose applicant's claimed array of interdigitated microelectrodes (several different drawing Figures, especially Figure 56A and 56B) including: an upper (horizontal) surface, two (vertical) walls, and a polymer central core (1310, 1320, 1330, 1370; col. 34, lines 37-41) forming 90 degrees angle with a lower surface (of a silicon dioxide or polymer/plastic substrate 1302, 1360; col. 34, lines 37-41), wherein the upper surface and each of the two walls are substantially parallel and includes a gold, platinum titanium metal thin film (13321 col. 38, lines 42-44) lower surface in contact with the polymer core,

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and the lower surface lacks a continuous metal thin film (as shown in Figure 56A).

As to claim 15, the metal thin film (at its vertical portion) includes a thickness and a (hypothetical vertical) plane which bisects the thickness and which forms 90 degrees angle with the lower surface.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 6, 10-12, 20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al, as applied to claims 1 and 15.

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As to claims 6 and 20, Sherman et al do not disclose the device including explicitly same material of the core and the lower surface, which is polymer. However providing either same or suitably different materials for the substrate and the core would have been obvious to one of ordinary skill in the art for providing a base support, it would have been a matter of obvious design choice to one of ordinary skill in the art.

As to claims 10-12 and 23-25, although Sherman et al do not disclose the metal thin film of any particular dimension (such as width, length, thickness etc.), it would have been obvious to one of ordinary skill in the art to select suitable optimum dimension of the metal film, since it has been held that where general conditions of the claim are discovered in the prior art, discovering the optimum or workable range involves only routine skill in the art. In re Aller, 105 USPQ 233.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Williams et al and Dinu et al each are cited for showing a general structure of a microelectrode.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok

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Patel whose telephone number is 571-272-2456. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel can be reached on 571-272-2457. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ashok Patel  
Primary Examiner  
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